

**International Union of Operating Engineers, Local 400 and Judi Scott and Linda Morgan and Richard L. Christian, Sr., and Ruth Strah.**  
Cases 19-CA-12852, 19-CA-13263, 19-CA-13831, and 19-CA-13891

December 16, 1982

### DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER

On May 21, 1982, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order,<sup>1</sup> as modified herein.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended

<sup>1</sup> The Administrative Law Judge found that Respondent violated Sec. 8(a)(1) of the Act by terminating its contract for janitorial services with Mary Christian because her husband, Richard Christian, had engaged in certain protected activity. In his recommended remedy, however, the Administrative Law Judge did not provide for reinstatement of the contract or monetary relief because, in his words, "[u]nder the circumstances it seems unnecessarily punitive to compound the traditional basis of further financial adversity with a second form of monetary remedy stemming from this unusual type of violation." The General Counsel has excepted to the Administrative Law Judge's failure in this regard, contending that the appropriate measure of remedial relief should include reinstatement of Christian's contract and the payment of whatever amounts are required by that contract. No other exceptions have been filed by the General Counsel or by any of the other parties to this proceeding.

We agree with the General Counsel that the Administrative Law Judge's recommended remedy is incomplete. In the circumstances of this case, the fact that Respondent has suffered and may continue to suffer "financial adversity" or that the violation is an "unusual" one constitutes insufficient grounds for refusing to provide a make-whole remedy. Having concluded that Respondent violated Sec. 8(a)(1) of the Act by terminating Christian's contract, the Administrative Law Judge erred by failing to recommend the full measure of compensatory relief, including reinstatement of her contract and the payment of whatever sums are required thereunder. Such a remedy is necessary to eliminate fully the coercive effects of Respondent's unlawful action on the bargaining unit employees. See *Consolidated Foods Corporation and its wholly-owned subsidiary Lawson Milk Company*, 165 NLRB 953, 959 (1967), *enfd.* in part 403 F.2d 662 (6th Cir. 1968), citing *Murray Golub, Selwyn Golub, and Albert Golub d/b/a Golub Bros. Concessions*, 140 NLRB 120 (1962), wherein the Board reaffirmed its position that a supervisor discharged because he or she is the spouse of an employee who has engaged in union or other protected activities is entitled to reinstatement and backpay. Accordingly, we shall modify the Administrative Law Judge's recommended Order to provide a complete and appropriate remedy for Respondent's unlawful conduct.

Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, International Union of Operating Engineers, Local 400, Helena, Montana, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(b) and re-letter the subsequent paragraphs accordingly:

"(b) Offer Mary Christian reinstatement of her janitorial contract and make her whole, including interest to be determined in the manner set forth in *Florida Steel Corporation, supra*, for any loss of contractual revenue she may have incurred as a result of her contract being terminated."

2. Substitute the attached notice for that of the Administrative Law Judge.

### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT interrogate employees regarding their protected concerted and/or union activities and sympathies.

WE WILL NOT threaten to discharge employees for engaging in union activities.

WE WILL NOT threaten to withhold employment benefits and impose more severe working conditions if employees choose union representation.

WE WILL NOT threaten to bargain in bad faith with any such chosen collective-bargaining representative of employees.

WE WILL NOT discharge employees because they join, support, or assist United Food & Commercial Workers Union (UFCW), or any other labor organization, and to discourage them from such activities.

WE WILL NOT discharge employees because of their complaints regarding wages, hours, and working conditions or for stating intentions to file employment discrimination proceedings.

WE WILL NOT terminate independent contractor relationships, such as that formerly held by Mary Christian for janitorial services at our premises, because of the marriage relationship between such an individual and an employee against whom we have practiced unlawful interference, coercion, or restraint.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights protected by the National Labor Relations Act.

WE HAVE reinstated Mary Fitzpatrick, Joyce McCutcheon, Richard Christian, Ruth Strah, Susan Agostinelli, and Maxine McFarland to their former positions of employment without prejudice to seniority or other rights and privileges previously enjoyed, recognizing too that Linda Clark had such a right to reinstatement before she moved from this job area, and WE WILL make them all whole, with interest, for any losses in pay resulting from their each being terminated during 1981.

WE WILL expunge from our files any references to these terminations, and WE WILL notify each such person that this has been done and that evidence of this unlawful termination will not be used as a basis for future personnel actions against them.

WE WILL offer Mary Christian reinstatement of her janitorial contract, and WE WILL make her whole, with interest, for any loss of contractual revenue she may have incurred as a result of her contract being terminated.

#### INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400

#### DECISION

#### STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Helena, Montana, on November 19, 1981, based on an amended consolidated complaint alleging that International Union of Operating Engineers, Local 400, in its capacity as an employer and called Respondent herein, violated Section 8(a)(1) and (3) of the Act by interrogation, threats, and creation of an impression of surveillance, all relative to employees protected, concerted and/or union activities, by terminating six employees to discourage their joining, supporting, or assisting certain unions or engaging in concerted activities for the purpose of collective bargaining, and by terminating a seventh employee because of his complaints regarding wages, hours, working conditions and his threat to initiate employment discrimination proceedings with Federal agencies, while also terminating an independent contractor relationship providing for janitorial services to Respondent by the spouse of this employee.

Upon the entire record, my observation of the witnesses and consideration of post-hearing briefs, I make the following:

#### FINDINGS OF FACT AND RESULTANT CONCLUSIONS OF LAW

Respondent is the IUOE affiliate covering Montana, and was formerly governed by Vincent Bosh as its business manager and financial secretary.<sup>1</sup> During June 1980

<sup>1</sup> As such an affiliate Respondent has for many years, and does now, engage in representation of craft employees from an office and place of business in Helena, Montana, where in the course and conduct of such

bookkeeper Mary Fitzpatrick chancedly learned that an office staff such as that of which she was a part could organize themselves and seek a collective-bargaining agreement. Fitzpatrick immediately mentioned this passing to chief dispatcher Linda Clark (Morgan), journalist Joyce McCutcheon, and dues cashier Judi Scott, each of whom was seemingly intrigued by the idea. That evening Scott was unprecedentedly telephoned at her home by Bosh, and a 1-hour discussion ensued in which she was questioned on her apparent interest, along with Fitzpatrick and McCutcheon, in "getting a union started in the office." Bosh disclosed that his lead to making this call was business agent Jim (John) Maze, and he became progressively more excited as the discussion unfolded. Bosh termed the employees' goal of having a union as "fine with him," but that as a reputedly "tough negotiator" they must expect to start "from scratch." As to particular personalities that came up in the conversation, Bosh stated forcefully that Fitzpatrick was "not indispensable."

On June 24, 1980, the day following this telephone call, Bosh assembled all Respondent's employees to a meeting at which one of the persons present was Robert Voytoski, then an assistant business manager. Bosh first introduced Sharon Maher as a well-educated friend of his who would be a new staff member representing "his eyes and ears."<sup>2</sup> He then announced a withdrawal of several fringe benefits, couching this in terms of the ramifications associated with employees having their own labor organization. Further, he articulated this action in terms of Respondent's poor financial condition, adding a vow never to negotiate with United Food & Commercial Workers (UFCW), Office and Professional Employees International Union (OPEIU), or the Machinists Union, as opposed to his open-mindedness were the Teamsters or Communication Workers of America (CWA) to materialize. Bosh invited rank-and-file office employees to informally vote on the issue, and left the room for this to be done, taking his business agents with him. Maher remained with the other employees, and a desultory consensus was reached to tell Bosh that a union was not wanted.

Matters then became dormant until the following September when a computer was installed. Its initial function related to membership records, however, further capabilities as to dues, accounting, dispatching, and the credit union were also envisioned. Reflecting on this, Clark contacted the OPEIU in Portland, Oregon, and spoke with an official about prospects for representation. She described the essence of information so obtained

business operations it annually collects dues and initiation fees in excess of \$500,000 from members within the State, and remits per capita taxes valued in excess of \$50,000 to the International Union in Washington, D.C. On these admitted facts I find Respondent to be an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act.

<sup>2</sup> Maher testified to being a college graduate and having Bosh's daughter as her best personal friend for 12 years preceding this first workday of June 24, 1980. Arrangements for the job had been made the previous evening when Bosh called her about "problems in the office," and outlines a theme of employment by which he would "learn every job in the office," familiarize herself with capabilities of a computer soon to be installed, and generally prepare to make operating recommendations to the administration.

with Fitzpatrick and dues cashier Ruth Strah, from which it was collectively decided to opt instead for UFCW out of Helena. A meeting was arranged for November 12, 1980, at which these three signed UFCW authorization cards, followed by McCutcheon and receptionist Susan Agostinelli (Freeman) soon doing the same. By letter dated November 17, 1980, Helena Local 684, UFCW notified Bosh of its intention to organize among his "... dispatchers, bookkeepers, cashiers, receptionist, journalist, credit union clerical and office secretary clerical." This was followed by a second letter dated December 3, 1980, claiming majority interest had been shown among all clerical employees (excluding confidential secretary), and appending the signatures of Fitzpatrick, Agostinelli, McCutcheon, Clark, and Strah as those engaged in the organizing program.<sup>3</sup>

The UFCW filed an RC petition on December 9, 1980, which triggered invocation of the AFL-CIO's no-raiding article XX.<sup>4</sup> This led to suppression of the UFCW's local endeavors in January, and contemporaneously the RC petition was dismissed for concomitant lack of cooperation. Still striving, Clark contacted the OPEIU official in Portland again. Upon assurance that article XX would not be an impediment with that labor organization, authorization cards were obtained and soon signed by both Clark and Fitzpatrick. As this ensued it happened that on an evening after work, on or near to January 26, 1981, Clark, Fitzpatrick, McCutcheon, and Strah met with Scott at the Locker Room Tavern in Helena to discuss their union activities. In the course of this they were approached briefly by bartender Mike Wrigg, husband of Respondent's then office employee Jan Wrigg. While Mike Wrigg was only in the group's immediate presence for a few seconds, Clark testified that he pointedly watched them over the next 1-1/2 hours.

The Regional Director's letter effectuating dismissal of the RC petition was dated January 28, 1981. On February 6, 1981, Clark, Fitzpatrick, and McCutcheon were each notified of termination.<sup>5</sup> A hiatus in significant events followed and the chronology of this case resumes the following July.<sup>6</sup> By this time Bosh had for several months been unable to fulfill his duties for health reasons and Voytoski has assumed the position of acting business manager.<sup>7</sup> A contentious election took place on August 11, with multiple candidates vying for various officer positions and the job of business manager. Election protests ensued and in consequence a new seating ordinarily to

occur on September 1 was placed in doubt. In the midst of this turmoil Bosh issued a short letter to all employees dated August 14, stating they would be laid off effective August 31 rather than suffer being fired by a "new administration." Vacation pay, sick leave for staff, and severance pay were also promised in this letter. Later in August Respondent's executive board determined to set aside the recent election and formally authorized Voytoski to continue functioning as interim business manager.<sup>8</sup>

In fact, Voytoski modified the terms of Bosh's August 14 letter by continuing several office employees into September. This occurred during a staff meeting that Voytoski conducted on August 31, in which he convolutedly told those present how persons that were thought to be favored by Burlingame, these understood to be Strah, Agostinelli, and Bosh's former secretary Maxine McFarland,<sup>9</sup> need not show up for work the next day or thereafter. In consequence, Voytoski's office cadre as of September 1 was Maher, Jan Wrigg, and Cindy Routzahn, which he soon augmented by hiring Donald Lander as a dispatcher and Jeanette London to replace Routzahn who quit.

Meanwhile separate dynamics had affected dispatcher Richard Christian. He had originally been hired routinely for the position in 1979, but soon came to bask lengthily in Bosh's special favor. This manifested with business-related dinners together and Bosh confiding in Christian about office politics. More pointedly Bosh had summoned Christian to his office only scant hours before the staff meeting of June 24, 1980, to tip Christian that the withdrawal of benefits he would hear about was only a blustering ploy. This special rapport was also tapped during the eventful months late that year, as Bosh sought reassurance from Christian that he at least had not signed for UFCW. Further, Bosh used him, as noted above, to orchestrate a meeting for employees with the Teamsters, and induced speculation from Christian about who union "ringleaders" might be. As to this point Christian testified that Bosh named Clark in particular, and as they talked further and otherwise on the matter Christian diplomatically told Bosh to include Fitzpatrick in any tally of union supporters. Later, as a matter relating to Christian's own "financial condition," Bosh engaged his wife Mary Christian to perform "cleaning and maintenance services for [Respondent's] building and premises," and caused a formal written agreement to be reached whereby she was declared as "independent contractor" for such purposes.<sup>10</sup>

<sup>3</sup> Scott had by this time been laid off, although as will be seen she maintained contact with her colleagues. Additionally it may be noted that during November 1980 Bosh prevailed on dispatcher Richard Christian to arrange a meeting between office employees and a Local Teamsters official in order to "split" any vote on unionization. This meeting proved inconclusive, and a subsequent one of similar purpose soon thereafter in December with the CWA even more so.

<sup>4</sup> Respondent also filed RM petitions on November 7 and December 12, 1980, both of which were ultimately dismissed for lack of cooperation.

<sup>5</sup> During January Respondent has experimented unsuccessfully with placing office employees on a 3-week-per-month work schedule and corresponding proportionate pay reductions. This proved functionally unsatisfactory and was soon discontinued.

<sup>6</sup> All dates and named months here and after are in 1981, unless shown otherwise.

<sup>7</sup> Bosh did, however, involve himself sporadically in running Respondent's affairs throughout all spring and summer months.

<sup>8</sup> This course of action was, in turn, reversed following legal advice and prodding by the International Union, with the consequence that later in September a new slate of officers was actually installed under the aegis of Bill Burlingame as business manager. The underlying election protests were, as of the time of hearing, yet unresolved.

<sup>9</sup> McFarland's job for several years had been as personal, confidential secretary to Bosh, handling as typically so for such a position his calls, appointments, and mail. On June 15, a point in time at which Bosh had become essentially inactive, she was reassigned, or in her view "demot[ed]," to telephone receptionist duties. Following this action she had, for the first time, signed a union authorization card.

<sup>10</sup> I correct the transcript at p. 134, l. 13 and at p. 135, ll. 10 and 11 by changing 1980 where severally there shown to be 1981.

However, by July, Christian was becoming increasingly dissatisfied with her salary. Further, he was concededly not getting along well with Maher, who had been elevated to a supervisory position over him the previous February. These matters crystalized somewhat symbolically when, in July, Christian declined Maher's invitation to attend a banquet planned for Bosh because Christian could not afford the \$30 cost without a raise in pay. Maher's apparently test reply to him was that Christian could be "guarantee[d]" not getting a raise, and to this he stated that he would probably file discrimination charges because female employees around him had gotten them. Christian vacationed for the last week of July and first week of August, during which his wife received a letter from Bosh terminating her contract for stated "economic reasons" with added advice that effective September 3 cleaning would be "done in-house." Christian first returned from vacation on Monday, August 10, and the following day Bosh terminated him in an angry confrontation that included reference to Christian's "bitching," inability to "be pleased," and threats to "file discrimination charges."

Regarding factual matters of this case, Respondent's counsel has conceded that events on June 24, 1980, did, or probably did, constitute an unfair labor practice (Resp. Br., p. 3). Bosh did not testify, in consequence of which Respondent's reasons for the various terminations emanate primarily from Voytoski, with more limited supportive testimony from Maher. A pervading reality of late 1980 onward was Respondent's poor financial picture, one that had resulted in executive board action halving monthly dues for the 1,600 members and mandating a reduction in expenses. In this context Clark was seen as progressively "sloughing off" her job, while Fitzpatrick was believed to have unaccountably fallen behind in her account work. McCutcheon, whose primary responsibility was publishing Respondent's then quarterly newspaper, had chronically missed time goals, and the function was a glaring expense under all the circumstances. These were essential reasons for the three individuals being laid off in February as "really as a reduction of force."<sup>11</sup> As to employees terminated effective August 31, Voytoski testified disingenuously that McFarland was not trusted because of internal information apparently having been leaked to local media, that Agostinelli was simply no longer needed because others were covering office telephones, and that Strah seemingly did not embrace Respondent's best interests, in part as manifested by lackadaisical attention to dispatching requests.

In the rather chaotic and strung-out circumstances of this case it is sufficiently clear that chief allegations of the complaint have merit. Bosh's unlawful actions in June 1980 of interrogating Scott and cruelly intimidating employees in terms of their fundamental fringe benefits of employment were preliminary indicators of his capac-

ity for retaliatory action. Maneuverings late that year reinforce this belief, and it is valid to say that February terminations were suspiciously timed just after pending representation petitions had been cleared away. This is particularly true when credible testimony of Christian, as a former Bosh confidante, attributes Bosh with associating concerted, protected activities to "ringleader[ship]" and a harboring of dislike of Clark for this reason. Artificiality is also present when Bosh is known to have envisioned the solution to Fitzpatrick's support for UFCW as making her supervisory, and the strategy of labeling Christian as Respondent's "artist" in anticipation of this being a useful explanation to why Clark was released ahead of the lesser-serviced Christian. The two complaints known to exist toward Clark as supposedly an adverse reflection on her dispatching duties were quite stale, and aside from the fact that McCutcheon's admitted working crossword puzzles at the office had been long tolerated, issuance of the newspaper for which she had been responsible was increased from a quarterly to a monthly basis soon after her termination. Considering these factors and the capricious animus displayed by Bosh, coupled with the fact that the three terminations in February affected only known supporters of the employees' recent attempt at self-organization, it is compelling to infer, as I do, that Respondent was unlawfully motivated in its actions and the several contrary explanations advanced are but mere pretext.

In a metamorphosis extending perhaps as long as from June 1980 to the following summer, Christian was replaced by Maher as favored protegee. Standing alone this is simply a fact of change, but coupled with Christian's growing dismay as it translated into job-related complaints and a stated intention to challenge Respondent's administration with employment discrimination charges, it placed him in a position guarded by law from coercively retaliatory conduct. Christian's description of his termination episode, and his corroboration by Strah, amply reveals that Bosh interfered directly with the rights represented by Christian's recent past expression, and this was compounded in the sense that Mary Christian's ouster was spitefully related to displeasure with her husband. The self-serving reference to "economic reasons" contained in Bosh's operative letter is unpersuasive, particularly since Voytoski failed to enlarge on this or in any way testify to facts that would grant credence to the claim. On this overall basis I find sufficient proof advanced by the General Counsel to support entire paragraph seven of the amended consolidated complaint.<sup>12</sup>

Respondent's defense to the allegations that Strah, Agostinelli, and McFarland were unlawfully terminated is half-hearted at best. It should be remembered that by the August point in time this labor organization was gripped by institutional anarchy, and Bosh's final writings in office were pathetic at best and irrational at worst. There is every indication that the influence of his

<sup>11</sup> Clark testified to a discussion with Bosh later in December 1980, at which point he criticized her for dispatching incidents that had occurred the previous spring, and about her claimed "interference" with tasks of the dues cashier. McCutcheon was also known to have habitually worked crossword puzzles while at work, a matter she explained as first of all related to her journalistic duties and secondly done primarily during lax periods of her own time.

<sup>12</sup> Respondent established the inconsequential point that Christian had not performed sign painting on the window of the main office entrance, however, Christian credibly explained that he had long made known this could only be done for extra compensation which Bosh never sincerely offered to pay.

years in command left Voytoski as a mere surrogate who measured the final punishment to those having continually engaged in union talk around the office. The action completed elimination of those who had originally openly signed for UFCW, plus McFarland who had by August herself signed an authorization card and had previously caused Bosh to evidence displeasure for having participated in an after-hours discussion with several of the UFCW activists the prior January at the Locker Room as such a matter had been reported to Bosh by Mike Wrigg. The totality of evidence bearing on the August terminations is sufficient to infer, as I do, that the three employees not carried into September under Voytoski's temporary regime were selected thusly for discriminatory reasons.

The claim of unlawfully creating an impression of surveillance is raised against Respondent both in terms of the implications carried by Bosh's telephone call to Scott on June 23, 1980, and as based on a fleeting incident occurring the following year's August 11. The first of these is patently unmeritorious, for Fitzpatrick vividly described how the several office employees, Scott included, had on their lunch hour of June 23, 1980, openly and extensively discussed the abhorring interest in union representation *in the very company of Maze*, a fact that fully harmonizes with Scott's later persistence in conversing telephonically with Bosh about whether Maze had been the squealer, and, more significantly, a fact that totally undercuts the notion of surveillance (creation of an impression of, or otherwise) as to which covert snooping on employees is a vital component. The episode on August 11 arose when numerous people, among them Christian, Agostinelli, Strah, McCutcheon, and Fitzpatrick, had assembled after office hours in the same Locker Room Tavern for reconstitution in the wake of Christian having just been acrimoniously fired. In the commotion before leaving Respondent's office, Agostinelli had spoken to her husband by telephone to advise where she was headed, and her words could readily have been overheard by a nearby crony of Bosh. Shortly after the squad settled into the Locker Room's surroundings, cars appeared in its parking lot bearing Maher, Voytoski, Bosh, and crony. Agostinelli testified how these arrivals momentarily glanced around at the easily recognizable cars already there and then drove off. Voytoski touched on this incident in his testimony, recalled that the then-beleaguered administration had simply decided to have a beer after work and randomly chose to head for the Locker Room, known to be a stopping-off place of Respondent's employees although not frequented much by Voytoski himself. When they arrived, and on Maher's casual suggestion in terms of so many familiar cars being around, they spontaneously decided to imbibe elsewhere. These fortuities fall far short of surveillance, and even assuming the crony actually pointed the Bosh forces to the Locker Room the intrusion was so slight and ineffectual as to fall short of a violation in the statutory sense. For this reason I recommend dismissal of all aspects of the complaint dealing with creation of the impression of surveillance.

Accordingly, I render conclusions of law that Respondent, by interrogating employees regarding their

protected, concerted and/or union activities and sympathies, by threatening discharge for engaging in union activities, by threatening to withhold employment benefits and impose more severe working conditions if employees choose union representation, by threatening to bargain in bad faith with any such chosen collective-bargaining representative of employees, by discharging employees because they joined, supported, or assisted the UFCW and to discourage them from such activities, and by discharging an employee because of his complaints regarding wages, hours, and working conditions and his stated intention of filing an employment discrimination proceeding, while terminating the independent contract for janitorial service of this employee's wife because of the spousal relationship,<sup>13</sup> has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>14</sup>

The Respondent, International Union of Operating Engineers, Local 400, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Interrogating employees regarding their protected, concerted and/or union activities and sympathies.

(b) Threatening discharge of employees for engaging in protected, concerted and/or union activities.

(c) Threatening to withhold employment benefits and impose more severe working conditions if employees choose union representation.

(d) Threatening to bargain in bad faith with any such chosen collective-bargaining representative of employees.

(e) Discharging employees because they joined, supported, or assisted the United Food and Commercial Workers Union (UFCW), and to discourage them from such activities.

(f) Discharging employees because of complaints regarding wages, hours, and working conditions and because of stating intentions to file employment discrimination proceedings.

(g) Terminating the independent contractor relationship of a person because of their spousal relationship to

<sup>13</sup> I have pondered the matter of remedial action appropriate to the termination of Mary Christian's contract, and recommend that none be applied. It is uncertain whether her relationship to Respondent arose merely as a grandiose gesture of the increasingly unpredictable Bosh, or whether she had a bona fide business identity as a custodial contractor in the first instance. Moreover, it is clear from certified public accountant's report on special audit examination done as of September 20, a 30-page document replete with instances of past questionable expenses and practices, that this labor organization may have been systematically bilked by persons whose authority expired on that date. Under the circumstances it seems unnecessarily punitive to compound the traditional basis of further financial adversity with a second form of monetary remedy stemming from this unusual type of violation.

<sup>14</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

the employee against whom interference, coercion, or restraint had been practiced.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate policies of the Act:

(a) Offer Linda Clark, Mary Fitzpatrick, Joyce McCutcheon, Richard Christian, Ruth Strah, Susan Agostinelli, and Maxine McFarland reinstatement to their former positions of employment without prejudice to seniority or other rights and privileges, or if in any case their former job no longer exists, to a substantially equivalent job, discharging, if necessary, any employee hired in replacement, and make them whole, in the manner provided in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),<sup>16</sup> for any loss of earnings incurred as a result of their being terminated.

(b) Expunge from its files any reference to the terminations referred above, and individually notify those named persons in writing that this has been done and that evidence of such an unlawful termination will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post the attached notice marked "Appendix" at its Helena, Montana, offices and union hall.<sup>16</sup> Copies of said notice, on forms to be provided by the Regional Director for Region 19, after being duly signed by Respondent or an authorized representative, shall be conspicuously posted immediately upon receipt thereof and be maintained for 60 consecutive days thereafter, in all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.<sup>17</sup>

IT IS FURTHER ORDERED that the amended consolidated complaint be dismissed other than as to violations specifically found herein.

<sup>16</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>17</sup> I recognize that the General Counsel has represented all discriminatees except for Clark were reinstated as of October 15, and that she had moved from the employing vicinity. In view of unusual circumstances in this case I nevertheless recommend couching reinstatement rights in prospective terms and would envision the notification procedure of this paragraph 2(e) as the vehicle whereby Respondent may finally and formally verify that job restorations are of settled permanence and that Clark could have become reemployed had she so chosen. It is particularly appropriate to fashion this deviation in light of the Board's newly announced policy on expunction of disciplinary file references. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

<sup>18</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).